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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

Petition of Southwestern Bell Telephone Company,)
Pacific Bell, and Nevada Bell for Expedited)
Declaratory Ruling on Interstate IntraLATA)
Dialing Parity or, in the Alternative, Various)
Other Relief)

File No. NSD L-98-121

AT&T CORP. COMMENTS ON DIALING PARITY PLANS

Pursuant to the Public Notices issued June 23 & 24, 1999 and the Commission's ILP Order,¹ AT&T Corp. ("AT&T") hereby submits its comments on certain intraLATA toll dialing parity implementation plans that have been filed with the Common Carrier Bureau.

First, many of the dialing parity plans filed with the Commission appear to propose a process for interLATA and intraLATA PIC changes that would not comport with the rules established in the Commission's Second Report and Order in CC Docket

¹ Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, FCC 99-54, ¶ 7, released March 23, 1999 ("ILP Order").

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No. 94-129.² For example, the plans filed by Allegiance Telecom, Inc. ("Allegiance") for New York, Virginia, and the District of Columbia state that in order for a competing carrier to submit a PIC change to Allegiance, that carrier "must represent that the IXC has an LOA on file from the customer, or that the IXC is pursuing obtaining an LOA."³ However, Section 64.1150 of the Commission's rules⁴ provides that a carrier may submit a PIC change either through a written LOA, electronic authorization, or third party verification. The Second Report and Order holds that these provisions apply to "all changes to a subscriber's preferred carrier, including local exchange, intraLATA toll, and interLATA toll."⁵

Other dialing parity plans filed with the Commission include similar provisions. These plans all were drafted by the same law firm, and include substantively identical clauses that seek to impose varying financial penalties on competing carriers that are unable to "produce a Letter of Agency signed by the customer" when the customer

² Second Report and Order and Further Notice of Proposed Rulemaking, Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Docket No. 94-129, released December 23, 1998 ("Second Report and Order").

³ E.g., Allegiance Telecom of Virginia, Inc., Plan for IntraLATA Equal Access Implementation, p. 4.

⁴ 47 C.F.R. § 64.1150.

⁵ Second Report and Order, ¶ 81.

"denies requesting a change in intraLATA toll providers."⁶ For the reasons discussed above, the Commission should make clear that LECs may not seek to penalize competitors that comply with the requirements of its slamming rules.⁷

Second, the dialing parity plan filed by Omniplex Communications Group, LLC ("Omniplex") is unclear as to how that LEC proposes to recover its costs of implementing dialing parity.⁸ Omniplex's plan states only that it "will apply a minute of use additive access charge to the carrier for the recovery of cost in implementing this toll dialing parity plan." The plan is not competitively neutral to the extent it seeks to recover its costs only from competing carriers that are PIC'ed by Omniplex's local exchange customers. The Commission's Second Local Competition Order expressly provides that allowable, incremental dialing parity costs "must be recovered from all providers of

⁶ The following dialing parity plans appear to require a competing carrier to provide an LOA to document a PIC change if a customer challenges that change: Capital Telecommunications, Inc. (NJ); CTC Communications Corp. (MA, ME, NH, RI, VA); CTSI, Inc. (NY); Lightship Telecom, LLC (ME; NH); Network Plus, Inc. (MA, NH, NJ, NY, RI); RCN Telecommunications Services of Virginia (VA); Starpower Communications, LLC (VA).

⁷ Indeed, several of the dialing parity plans prepared by the same law firm that prepared the plans cited in note 6 acknowledge that a carrier may verify a PIC change by producing a signed LOA "or some other form of verification that is permitted by law." See, e.g., ChoiceOne Communications of Rhode Island, Inc. (RI); Hyperion Communications, LLC (AL, DC, WV).

⁸ Omniplex does not specify the states in which its proposed plan would apply; however, the Public Notice indicates that the plan is for Arkansas, California, Connecticut, Illinois, Kansas, Kentucky, Louisiana, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas and Wisconsin.

telephone exchange service and telephone toll service in the area served by a LEC, including that LEC, using a competitively-neutral allocator"⁹ The Commission should make clear in any order it issues in this proceeding that Omniplex may not impose what would, in effect, be a surcharge only on competitors that successfully win the intraLATA toll business of Omniplex's local exchange customers, and may not seek to recover all of its implementation costs from its competitors rather than allocating a portion of those costs to its own operations.

Third, various dialing parity plans now before the Commission appear to indicate that the LECs filing them intend to send traffic to competing carriers even if those carriers have indicated that they do not wish to serve certain customers:

[LEC] will route all originating intraLATA traffic to the designated carrier and will only block traffic at the request of the end user customer and/or in compliance with regulatory requirements. Requests from carriers to block traffic or to remove customers from their network will not be honored.¹⁰

⁹ Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd. 19392, 19442 ¶ 95 (1996) (emphasis added) ("Second Local Competition Order").

¹⁰ The above-quoted language or substantively identical requirements appear in the following dialing parity plans: ChoiceOne Communications, Inc. (MA, RI); CTC Communications Corp. (MA, ME, NH, RI, VA); CTSI, Inc. (NY); Hyperion Communications, LLC (AL, DC, WV); Lightship Telecom, LLC (ME; NH); NewComm Net, Inc. (MD); RCN Telecommunications Services of Virginia (MA, VA); Starpower Communications, LLC (VA); US LEC of Pennsylvania, Inc. (NJ); Winstar Wireless, Inc. (AZ, CA, GA, IN, MA, NH, NJ, NM, OH, RI, UT).

To the extent the above-quoted provision purports to require a competing carrier to accept traffic from any LEC customer that the LEC elects to send to that competitor, it is improper. This is made clear by the Commission's Second Local Competition Order. In that order the Commission addressed a claim by Lincoln Telephone that in order to be eligible to receive intraLATA dialing parity a competing provider must agree to serve every end office in a LATA.¹¹ The Commission rejected this contention, concluding that Congress did not intend to "condition a carrier's right to receive the benefits of dialing parity upon its assuming the obligation[]" to provide service to all end offices.¹² The Commission thus clearly recognized that an IXC has the right to choose which end offices it wishes to serve.¹³ Indeed, the dialing parity plans at issue also appear to acknowledge this holding, as most of them provide that carriers obtaining dialing parity from the LECs "will have the option of participating in all market areas or in a specific market area."¹⁴ The Commission should confirm its prior rulings permitting

¹¹ See Second Local Competition Order at 19409 ¶ 28.

¹² Id. at 19410 ¶ 30.

¹³ AT&T discussed these issues at greater length in its Revised Proposed Findings of Fact And Conclusions of Law of AT&T Corp., filed July 2, 1999 in MGC Communications v. AT&T Corp., File No. EAD-99-002, which it hereby incorporates by reference into the instant pleading.

¹⁴ The above-quoted language or substantively identical requirements appear in the following dialing parity plans: ChoiceOne Communications, Inc. (MA, RI); CTC Communications Corp. (MA, ME, NH, RI, VA); CTSI, Inc. (NY); Hyperion Communications, LLC (AL, DC, WV); NewComm Net, Inc. (MD); US LEC of

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carriers to elect not to provide interLATA or intraLATA toll services to a particular end office.

Finally, the dialing parity plans filed by Community Telephone Corporation ("Community") for the states of Kansas, Tennessee, Indiana and Kentucky appear to seek to recover costs that are not authorized by the Second Local Competition Order.

Community states that the costs it seeks to recover "include: ... training for Business Office, Marketing, Carrier Services, Customer Services and Service Center personnel"¹⁵ The Second Local Competition Order makes clear, however, that LECs may not recover marketing and other costs that are not incremental costs of implementing intraLATA toll dialing parity: "LECs may recover the incremental costs of dialing parity-specific switch software, any necessary hardware and signaling system upgrades, and consumer education costs that are strictly necessary to implement dialing parity."¹⁶ The Commission should confirm that its orders do not permit Community to recover from

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Pennsylvania, Inc. (NJ); Winstar Wireless, Inc. (AZ, CA, GA, IN, MA, NH, NJ, NM, OH, RI, UT).

¹⁵ E.g., Application of Community Telephone Corporation for Approval of IntraLATA Toll Dialing Parity Plan Pursuant to FCC Order FCC 99-54 p. 3 (dialing parity plan for Tennessee).

¹⁶ Second Local Competition Order at 19441-42 ¶ 95 (emphasis added).

competing carriers the costs of adjusting that LEC's own operations, such as marketing and sales, to the availability of intraLATA dialing parity.¹⁷

¹⁷ The Second Local Competition Order held that local number portability ("LNP") cost recovery should serve as the model for dialing parity cost recovery, see id. at 19440 ¶ 92, and the Commission's LNP orders are instructive in this regard. The Commission repeatedly has rejected claims that ILECs should be permitted to recover all costs that they incur because of the availability of LNP, such as their costs to modify systems used for billing and other capabilities unrelated to actually porting numbers:

Several LECs argue that all costs that would not have been incurred but for portability should be included as eligible LNP costs. We disagree. [I]n submitting their tariffs, we require LECs to distinguish clearly costs incurred for narrowly defined portability functions from costs incurred to adapt other systems to implement LNP, such as repair and maintenance, billing, or order processing systems.

Memorandum Opinion And Order, Telephone Number Portability Cost Classification Proceeding, CC Docket No. 95-116, RM 8535, ¶ 12 (released December 14, 1998).

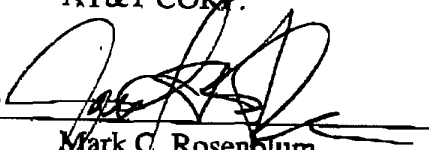
CONCLUSION

AT&T respectfully requests that the Commission direct the LECs that have filed the dialing parity plans discussed above to amend or clarify those plans to correct the deficiencies AT&T has noted in these comments.

Respectfully submitted,

AT&T CORP.

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